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# A BILL FOR AN ACT

RELATING TO DAM SAFETY.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Chapter 179D, Hawaii Revised Statutes, is  
2 amended by adding a new part to be appropriately designated and  
3 to read as follows:

4                           **"PART II. DAM AND RESERVOIR SAFETY**

5           **§179D-A Certificate of approval to impound.** Each dam  
6 owner shall hold a valid certificate of approval to impound in  
7 order to legally impound water under the laws of this State.

8           **§179D-B Entry upon property.** (a) The department shall  
9 have the right to direct and conduct such investigations as it  
10 may reasonably deem necessary to carry out its duties as  
11 prescribed in this part. For this purpose, the agents or  
12 employees of the department or any authorized representatives  
13 may enter at reasonable times, without prior notice, on any  
14 property, public or private, for the purpose of investigating  
15 the condition, construction, or operation of any dam or other  
16 artificial barrier dealt with in this part; provided that:



1           (1) If the owner of the property refuses to allow the  
2           inspection, the department may seek a search warrant  
3           to allow the inspection. If the department has been  
4           refused inspection of drawings, operational records,  
5           or other information concerning a dam or reservoir,  
6           the department may seek an administrative subpoena  
7           compelling production of the drawings, operational  
8           records, or other information; or

9           (2) If an emergency situation arises as deemed by the  
10          department, the agents or employees of the department,  
11          or any authorized representatives shall have the right  
12          to enter without prior notice, any property, public or  
13          private, for the purpose of investigating the  
14          condition, construction, taking any necessary remedial  
15          actions, or operation of any dam or other artificial  
16          barrier subject to this chapter, without a search  
17          warrant or liability for trespass.

18          (b) It shall be unlawful for any person to refuse entry or  
19          access to any authorized representative of the department who  
20          requests entry for purposes of inspection and who presents  
21          appropriate credentials. It shall also be unlawful to obstruct,



1 hamper, or interfere with any such representative while in the  
2 process of carrying out his official duties.

3 (c) Notwithstanding any other provision of law to the  
4 contrary, the board and its agents, engineers, and other  
5 employees, for the purposes of enforcing this chapter, may enter  
6 upon any land or water in the State that is the subject of an  
7 inspection or investigation without a search warrant or  
8 liability for trespass.

9 **§179D-C Injunctive relief.** Whenever in the judgment of  
10 the department any person has engaged in or is about to engage  
11 in any act or practice which constitutes or will constitute an  
12 unlawful action under this part, the person may make application  
13 to the circuit court of the county in which the unlawful act or  
14 practice has been or is about to be engaged in, or in which  
15 jurisdiction is appropriate, for an order enjoining such act or  
16 practice, or for an order requiring compliance with this part.  
17 Upon a showing by the department that such person has engaged in  
18 or is about to engage in any such act or practice, a permanent  
19 or temporary injunction, restraining order, or other order shall  
20 be granted without the necessity of showing lack of an adequate  
21 remedy at law.



1           §179D-D Emergency actions. (a) If, in the opinion of the  
2 department, conditions of any dam or reservoir are so dangerous  
3 to the health and safety of life or property as not to permit  
4 time for issuance and enforcement of an order relative to  
5 construction, modification, maintenance, or repair, or the dam  
6 is threatened by any large flood or other natural disaster, the  
7 department may immediately employ remedial measures necessary to  
8 protect such life and property.

9           (b) The department shall provide coordination and  
10 assistance to the proper state or county agency or agencies to  
11 maintain control of any such dam or reservoir which, pursuant to  
12 subsection (a), has been determined to be dangerous to life or  
13 property until such dam or reservoir is deemed safe, or until  
14 any emergency conditions which precipitated taking control of  
15 any such dam or reservoir, pursuant to subsection (a), have been  
16 abated. The department may determine the proper time at which  
17 to relinquish control of any such dam or reservoir.

18           (c) Any necessary and reasonable costs and expenses  
19 incurred by the department in fulfilling the duties mandated by  
20 subsections (a) and (b) in connection with a remedial or  
21 emergency action shall be recoverable by the department from the  
22 owner of any such dangerous or threatened dam or reservoir.



1 (d) Any owner failing or refusing, after written notice  
2 has been given, to pay the reasonable costs and expenses  
3 incurred by the department pursuant to subsection (c) shall be,  
4 upon complaint by the department to the attorney general,  
5 subject to reasonable attorney fees incurred in the recovery of  
6 such costs and expenses.

7 (e) All moneys collected by the department pursuant to  
8 subsection (c) shall be credited to the Dam Safety Fund created  
9 in section 179D-E.

10 (f) If a condition arises that in the opinion of the  
11 department may pose a danger to the health and safety of persons  
12 or property and sufficient time permits, the board may issue  
13 orders reciting the existence of such a condition and require  
14 any actions the board deems necessary to be taken. Any person  
15 to whom an order is directed, may challenge such an order, but  
16 shall immediately comply with the order, pending disposition of  
17 the person's challenge. The board shall give precedence to a  
18 hearing on such a challenge over all other pending matters.

19 (g) The legislature finds and declares that emergency  
20 actions under this section are in the public interest and for  
21 the public health, safety, and general welfare of the State, and  
22 authorizes the board to take any necessary actions.



1           §179D-E Establishment of dam safety special fund. (a)

2 There is established in the department a special fund, to be  
3 designated as the dam safety special fund. The fund shall be  
4 administered by the board. The following shall be deposited  
5 into the dam safety special fund:

6           (1) Appropriations by the legislature;

7           (2) All fees and administrative charges collected under  
8 this chapter or any rule adopted thereunder;

9           (3) Moneys collected as fines or penalties imposed under  
10 this chapter or any rule adopted thereunder;

11           (4) Moneys derived from public or private sources to  
12 benefit dam safety;

13           (5) Moneys collected in full or partial satisfaction of  
14 liens created by subsection (b);

15           (6) Any moneys collected from the sale of retail items by  
16 the department relating to dam safety;

17           (7) Any other moneys collected pursuant to this chapter or  
18 any rules adopted thereunder; and

19           (8) Moneys derived from interest, dividends, or other  
20 income from other sources.



- 1 (b) The board may expend moneys from the dam safety  
2 special fund for the following purposes or subject to the  
3 following provisions:
- 4 (1) Conducting investigations, research, and the  
5 collection of data, including technological advances  
6 made in dam safety practices elsewhere;
  - 7 (2) Conducting investigations, monitoring, and inspection  
8 programs and activities, or enforcement;
  - 9 (3) Preparation and dissemination of information to the  
10 public concerning activities authorized under this  
11 chapter;
  - 12 (4) Staff and dam owner training and educational  
13 activities;
  - 14 (5) Employ any necessary remedial measures to protect  
15 persons and property in accordance with this chapter;
  - 16 (6) Any other purposes to administer the dam safety  
17 program under this chapter or any rule adopted  
18 thereunder including but not limited to funding  
19 permanent or temporary positions who may be appointed  
20 without regard to chapter 76;
  - 21 (7) The board shall provide coordination and assistance to  
22 the proper state or county agency or agencies to



1 control any dam, reservoir, and appurtenances subject  
2 to section 179D-D until they have been rendered safe  
3 or the emergency has terminated;

- 4 (8) The costs and expenses of the coordination,  
5 assistance, control, regulation, abatement, and  
6 inspection provided by this section, including costs  
7 of construction, enlargement, repair, alteration, or  
8 removal work done to render the dam, reservoir, or  
9 appurtenances safe shall constitute a statutory lien  
10 against all property of the owner. Notwithstanding  
11 any other law to the contrary, the lien shall be  
12 considered prior and superior to all other mortgages,  
13 liens, or encumbrances of record even if those other  
14 mortgages, liens, or encumbrances were filed before  
15 the lien pursuant to this paragraph becomes due; and
- 16 (9) Liens pursuant to paragraph (8) may be perfected and  
17 foreclosed in advance of construction, enlargement,  
18 repair, alteration, or removal or after completion of  
19 the construction, enlargement, repair, alteration, or  
20 removal. If perfected in advance, the lien shall be  
21 perfected by the filing of an affidavit of the board  
22 setting forth the estimate of the costs of





1 construction, enlargement, repair, alteration, or  
2 removal within the county in which the dam is located  
3 in the same manner as prescribed for mechanic's liens.  
4 When the affidavit is filed, the amount set forth in  
5 the affidavit shall be a lien in that amount against  
6 all property of the owner. If the actual cost of  
7 construction, enlargement, repair, alteration, or  
8 removal exceeds the estimated cost, the board may  
9 amend the affidavit setting forth the additional  
10 estimated cost. If the estimated cost exceeds the  
11 actual costs of construction, enlargement, repair,  
12 alteration, or removal at completion, the board shall  
13 file an amended affidavit at completion. If a lien is  
14 perfected in advance and the construction,  
15 enlargement, repair, alteration, or removal is not  
16 commenced within two years from the date of  
17 perfection, the lien shall be void. The board shall  
18 file a satisfaction of lien upon payment of the costs  
19 of construction, enlargement, repair, alteration, or  
20 removal by the owner.



1 (c) Moneys on balance in the special fund at the close of  
2 each fiscal year shall remain in that fund and shall not be  
3 transferred or lapsed to the credit of the general fund.

4 **§179D-F Dams and reservoirs completed prior to effective**  
5 **date of this chapter.** (a) Every owner of a dam that falls  
6 within the definition of a dam in this chapter and completed  
7 prior to the effective date of this chapter shall file with the  
8 board a separate application for a certificate of approval to  
9 impound and any other supporting information as required by the  
10 board for each of these dams. Each application shall also be  
11 accompanied by applicable application fees as required by the  
12 board.

13 (b) The board shall give notice to file an application for  
14 certificate of approval to impound to owners of such dams or  
15 reservoirs who have failed to file such applications as required  
16 by this chapter.

17 (c) The notice provided for in this section shall be  
18 delivered by certified mail to the owner at his last address of  
19 record in the office of the county tax assessor in which the dam  
20 is located. Such mailing shall constitute service.

21 (d) The board shall make inspections of such dams and  
22 reservoirs, unless the data, records, and inspection reports on



1 file with it are found adequate to enable a determination  
2 whether or not the certificate of approval to impound should be  
3 issued.

4 (e) The board shall require owners of such dams and  
5 reservoirs to perform at their expense such work or tests as may  
6 reasonably be required to disclose information sufficient to  
7 enable the board to determine whether to issue certificates of  
8 approval to impound, or to issue orders directing further work  
9 at the owner's expense necessary to safeguard life and property.  
10 For this purpose, the board may require an owner to lower the  
11 water level of, or to drain, the reservoir.

12 (f) If, upon inspection or upon completion to the  
13 satisfaction of the board of all work that may be ordered, the  
14 board finds that the dam and reservoir are safe to impound  
15 water, a certificate of approval to impound shall be issued.  
16 The board may find that the dam or reservoir will not safely  
17 impound water and may refuse to issue a certificate of approval  
18 to impound. Upon finding the dam and reservoir are unsafe to  
19 impound water, the board shall issue a written notice to the  
20 owner, whereupon the owner shall cause the dam and reservoir to  
21 no longer impound water after receipt of the notice.



1           §179D-G Dams and reservoirs under construction,  
2 enlargement, repair, alteration or removal before effective date  
3 of this chapter. (a) Any dam or reservoir that falls within  
4 the definition of a dam and reservoir in this chapter and which  
5 the board finds was under construction, enlargement, repair,  
6 alteration or removal and based on its findings not ninety per  
7 cent constructed, enlarged, repaired, altered, or removed on the  
8 effective date of this chapter, except as provided in subsection  
9 (b), shall be subject to the same provisions in this chapter as  
10 a dam or reservoir commenced after that date. Every owner of  
11 such a dam and reservoir shall file an application with the  
12 board for the board's written application approval of the plans  
13 and specifications.

14           (b) Construction, enlargement, repair, alteration, or  
15 removal work on such a dam and reservoir may proceed, provided  
16 an application for approval of the plans and specifications is  
17 filed, until an application approval is received by the owner  
18 approving the dam and reservoir or an order is received by the  
19 owner specifying how the construction, enlargement, repair,  
20 alteration, or removal must be performed to render the dam or  
21 reservoir safe. After receipt of an application approval or  
22 order specifying how construction, enlargement, repair,



1 alteration, or removal of the dam or reservoir must be  
2 performed, work thereafter must be in accordance with the  
3 application approval or order.

4       **§179D-H Annual report.** The department shall submit an  
5 annual report to the legislature by January 5 of each year  
6 concerning the activities of the department relating to this  
7 chapter for the preceding fiscal year. A copy of the report  
8 shall be provided to each of the following: the governor and  
9 the senate president and speaker of the house of  
10 representatives. The report shall include but not be limited to  
11 information on the following:

- 12       (1) Approvals of plans and specifications for construction  
13             of dams and reservoirs and for alterations,  
14             modifications, repairs, removal, and enlargements;
- 15       (2) A listing of dam safety inspections made;
- 16       (3) Use of appropriated funds;
- 17       (4) Rules adopted or amended;
- 18       (5) Enforcement orders and proceedings;
- 19       (6) Dam failures and department evaluations of the reasons  
20             for dam failure if know; and
- 21       (7) Any other available data regarding the effectiveness  
22             of the State's dam safety program.



1           §179D-I Dam owners; general requirements and  
2 responsibilities. Dam owners subject to regulation under this  
3 chapter shall assume but not be limited to the following general  
4 requirements and responsibilities:

- 5           (1) Maintain an operation and maintenance plan, that  
6 includes an owner/operator inspection and monitoring  
7 program, with written, regularly scheduled reports to  
8 the board, so as to maintain and keep the structure,  
9 its appurtenant works, and access in the state of  
10 repair and operating condition required by the  
11 exercise of due care, with due regard for the safety  
12 of persons or property, sound and accepted engineering  
13 principles, and the rules adopted by the board;
- 14           (2) Establish an emergency action plan for high and  
15 significant hazard potential dams and provide this  
16 plan to the board, state, and county civil defense  
17 agencies, and other necessary parties, with due regard  
18 for the safety of persons or property, sound and  
19 accepted engineering principles, and the rules adopted  
20 by the board;
- 21           (3) Cooperate with the board's agents, engineers, and  
22 employees in carrying out this chapter;



- 1 (4) Facilitate access by any necessary state agencies or  
2 authorized representative, to the dam, reservoir, or  
3 appurtenances. Physical clear access for a four-  
4 wheeled drive vehicle to the dam or reservoir site,  
5 and appurtenances if required by the board, shall be  
6 maintained in an accessible condition even during  
7 periods of inclement weather conditions;
- 8 (5) If physical clear access to the dam or reservoir site,  
9 upstream or downstream features of a dam particularly  
10 during periods of inclement weather conditions cannot  
11 be sustained, the dam owner for high and significant  
12 hazard potential dams shall have redundant early  
13 warning systems in place, as approved by the board;  
14 and
- 15 (6) Furnish upon request the plans, specifications,  
16 operating and maintenance data, or other information  
17 that is pertinent to the dam structure and  
18 appurtenances as indicated in this chapter."

19 SECTION 2. Section 179D-1, Hawaii Revised Statutes, is  
20 amended to read as follows:



1           "~~{}~~§179D-1~~{}~~ **Short title.** This chapter shall be known  
2 and may be cited as the "Hawaii Dam Safety Act of [~~1987~~]-  
3 2007"."

4           SECTION 3. Section 179D-2, Hawaii Revised Statutes, is  
5 amended to read as follows:

6           "~~{}~~§179D-2~~{}~~ **Declaration of purpose.** The purpose of  
7 this chapter is to provide for the inspection and regulation of  
8 construction, operation, and removal of [~~certain~~] all dams or  
9 reservoirs in order to protect the health, safety, and welfare  
10 of the citizens of the State by reducing the risk of failure of  
11 such dams. The legislature finds and declares that the  
12 inspection and regulation of construction, operation, and  
13 removal of [~~certain~~] all dams or reservoirs are properly a  
14 matter of regulation under the police powers of the State~~-~~,  
15 unless specifically exempted."

16           SECTION 4. Section 179D-3, Hawaii Revised Statutes, is  
17 amended to read as follows:

18           "~~{}~~§179D-3~~{}~~ **Definitions.** The following terms, whenever  
19 used and referred to in this chapter, shall have the following  
20 respective meanings, unless a different meaning clearly appears  
21 in the context:





1       "Application approval" means authorization in writing  
2 issued by the board to an owner who has applied to the board for  
3 permission to construct, enlarge, repair, alter, remove,  
4 maintain, or operate a dam and that specified the condition or  
5 limitations under which work is to be performed by the owner or  
6 under which approval is granted.

7       "Appurtenant works" means any structure, such as spillways,  
8 either in the dam or separate therefrom, the reservoir and its  
9 rim, low level outlet works, and water conduits, such as  
10 tunnels, pipelines, or penstocks, either through the dam or its  
11 abutment.

12       "Board" means the board of land and natural resources.

13       "Certificate of approval to impound" means authorization in  
14 writing issued by the board to an owner who has an existing dam  
15 and reservoir or who has completed construction, enlargement,  
16 repair, or alternation of a dam and that specifies the  
17 conditions or limitations under which the dam and reservoir are  
18 to be maintained and operated.

19       "Dam" means any artificial barrier, including appurtenant  
20 works, which impounds or diverts water, and which:

21       (1) Is twenty-five feet or more in height from the natural  
22             bed of the stream or watercourse measured at the



1 downstream toe of the barrier, or from the lowest  
2 elevation of the outside limit of the barrier if it is  
3 not across a stream channel or watercourse to a  
4 maximum water storage elevation; [~~or~~]

5 (2) Has an impounding capacity at maximum water storage  
6 elevation of fifty acre-feet or more. This chapter  
7 does not apply to any artificial barrier which is less  
8 than six feet in height regardless of storage capacity  
9 or which has a storage capacity at maximum water  
10 storage elevation less than fifteen acre-feet  
11 regardless of height [~~-~~]; or

12 (3) Meets additional criteria or is specifically exempted  
13 as determined by the board, pursuant to rules adopted.

14 "Department" means the department of land and natural  
15 resources.

16 "Emergency" includes, but is not limited to, breaches and  
17 all conditions leading to or causing a breach, overtopping, or  
18 any other condition in a dam and its appurtenant structures that  
19 may be construed as unsafe or threatening to life and property.

20 "Enlargement" means any change in or addition to an  
21 existing dam or reservoir that raises or may raise the water  
22 storage elevation of the water impounded by the dam.



1       "Hazard potential" means the possible adverse incremental  
2 consequences that result from the release of water or stored  
3 contents due to failure of the dam or misoperation of the dam or  
4 appurtenances. The hazard potential classification of a dam  
5 does not reflect in any way on the current condition of the dam  
6 and its appurtenant structures (e.g., safety, structural  
7 integrity, flood routing capacity).

8       "High hazard" means a dam's failure will probably cause  
9 loss of human life.

10       "Low hazard" means a dam's failure will result in no  
11 probable loss of human life and low economic and/or  
12 environmental losses. Economic losses are principally limited  
13 to the owner's property.

14       "Owner" means any person who [~~owns, controls, operates,~~  
15 ~~maintains, manages, or proposes to construct a dam or~~  
16 ~~reservoir.] has a right, title, or interest in or to the dam or~~

17 to the property upon which the dam or appurtenant works is  
18 located or proposed to be located.

19       "Person" means [~~any individual, partnership, corporation,~~  
20 ~~company, association, organization, the State and its~~  
21 ~~departments and agencies, and the political subdivisions of the~~  
22 ~~State.] any natural person, partnership, firm, association,~~



1 organization, corporation, county, county authority, trust,  
 2 receiver or trustee, limited liability company, limited  
 3 liability partnership, or company, or any state department,  
 4 agency, or political subdivision, or any other commercial or  
 5 legal entity. Whenever used in a section prescribing and  
 6 imposing a penalty or sanction, the term "person" includes the  
 7 members of an association or organization, and the officers or a  
 8 corporation, company, county, or county authority.

9 "Physical clear access" means a roadway or path which  
 10 allows timely access for inspection to a dam and its appurtenant  
 11 structures. If by roadway, the roadway shall be maintained in  
 12 an accessible condition by a four-wheeled drive vehicle even  
 13 during periods of inclement weather conditions.

14 "Probable" means more than likely than not to occur;  
 15 reasonably expected; realistic.

16 "Removal" means complete or partial elimination of the dam  
 17 embankment or structure to restore the approximate original  
 18 topographic contours of the valley.

19 "Reservoir" means any basin which contains or will contain  
 20 water impounded by a dam.

21 "Significant hazard" means a dam's failure will result in  
 22 no probable loss of human life but can cause major economic



1 loss, environmental damage, disruption of lifeline facilities,  
2 or impact other concerns. Significant hazard potential  
3 classification dams are often located in predominantly rural or  
4 agricultural areas but could be located in areas with population  
5 and significant infrastructure."

6 SECTION 5. Section 179D-4, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 " ~~{}~~§179D-4 ~~{}~~ **Liability for damages.** (a) Nothing  
9 contained in this chapter shall be construed to constitute a  
10 waiver of any immunity of the State and no action or failure to  
11 act under this chapter shall be construed to create any  
12 liability in the State, board, department, or its ~~{}~~~~officers or~~  
13 employees, for the recovery of damages caused by such action or  
14 failure to act.

15 (b) Nothing in this chapter and no order, action, or  
16 advice of the State, board, department, or any representative  
17 thereof, shall be construed to relieve an owner or operator of a  
18 dam or reservoir of the legal duties, obligations, or  
19 liabilities incident to the ownership or operation of a dam or  
20 reservoir; provided that an owner or operator of a dam or  
21 reservoir shall not be liable for damages as a result of only  
22 natural causes such as earthquakes ~~{}~~ of an average recurrence



1 interval of one thousand years, hurricanes or extraordinary  
2 rains of an average recurrence interval in excess of two hundred  
3 fifty years."

4 SECTION 6. Section 179D-5, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "[~~f~~] §179D-5[~~f~~] **Unlawful conduct.** (a) It shall be  
7 unlawful for any person to construct, enlarge, repair, alter,  
8 operate, or remove a dam or other artificial barrier covered by  
9 this chapter, except in such a manner as to conform to and  
10 comply with [~~the provisions of~~] this chapter and with all rules,  
11 orders, and [~~permits~~] application approvals established under  
12 this chapter.

13 [~~(b) The rules and orders adopted under this chapter shall~~  
14 ~~not apply to the design and construction of dams, reservoirs,~~  
15 ~~and appurtenant works existing on June 6, 1987, but the rules~~  
16 ~~and orders shall establish standards consistent with such design~~  
17 ~~and construction for the operation, maintenance, and repair~~  
18 ~~thereof, and those rules and orders then shall be applicable to~~  
19 ~~those dams, reservoirs and appurtenant works which were existing~~  
20 ~~on June 6, 1987.]~~

21 (b) Any person who engages in any action made unlawful by  
22 this chapter shall be guilty of a class C felony. Each day of



1 continued violation after conviction shall constitute a separate  
2 offense.

3 (c) The owner of a dam or reservoir that was constructed  
4 before July 1, 2007, under rules adopted by the board, shall  
5 file an application with the board for the approval of the dam  
6 or reservoir."

7 SECTION 7. Section 179D-6, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 " ~~{}~~ §179D-6 ~~{}~~ **General powers and duties of the board of**  
10 **land and natural resources.** (a) All dams or reservoirs in the  
11 State shall be under the jurisdiction of the board of land and  
12 natural resources until the board declares which dams are to be  
13 removed from its jurisdiction. ~~The board [of land and natural~~  
14 ~~resources]~~ shall administer the dam safety program established  
15 by this chapter. In carrying out this chapter, the board shall  
16 cooperate, advise, consult, contract, and enter into cooperative  
17 agreements with the United States government or any of its  
18 agencies, other state agencies, and the county governments or  
19 any of their agencies. In the performance of its duties, the  
20 board shall:

21 (1) Establish by rules adopted under chapter 91, such  
22 policies, requirements, or standards governing the



1 design, construction, operation, maintenance,  
2 enlargement, alteration, repair, removal, and  
3 inspection of dams, reservoirs, and appurtenant works  
4 for the protection of life and property from  
5 structural failure of dams and reservoirs;

6 (2) Conduct investigations and the collection of data,  
7 including technological advances made in dam safety  
8 practices elsewhere, as may be needed for the proper  
9 review and study of the various features of the  
10 design, construction, repair, removal, inspection,  
11 operation, maintenance, alteration, and enlargement of  
12 dams, reservoirs, and appurtenant works. The board  
13 may require submittal of reports of investigations  
14 from all owners;

15 (3) Conduct investigations and require reports from all  
16 owners to be made from time to time, such as watershed  
17 investigations and studies, as may be necessary to  
18 keep abreast of developments affecting stream runoff  
19 and as required to facilitate its decisions;

20 (4) Be authorized to enter upon such private property of  
21 the dam or reservoir as may be necessary in making, at  
22 the owner's expense, any investigation or inspection





1 required or authorized by this chapter. The entry  
2 shall not constitute a cause of action in favor of the  
3 owner of the land, except for damages resulting from  
4 wilful acts or negligence by the board or its agents;

5 (5) Require the owners to apply for, and obtain from the  
6 board written approval of plans and specifications on  
7 the construction of any new dam or reservoir or the  
8 enlargement of any dam or reservoir prior to  
9 commencement of any work;

10 (6) Require the owners to file an application and secure  
11 the written approval of the board before commencing  
12 the repair, alteration, or removal of a dam or  
13 reservoir, including the alteration or removal of a  
14 dam so that it no longer constitutes a dam or  
15 reservoir as defined in this chapter. Repairs shall  
16 not be deemed to apply to routine maintenance not  
17 affecting the safety of the structure;

18 ~~[(7) Require filing fees by rules to accompany each~~  
19 ~~application as required under the provisions of this~~  
20 ~~chapter.]~~

21 (7) Require owners to secure the written approval of the  
22 board to impound water;



- 1       (8) Require fees to cover the board's costs in carrying  
2       out the administration of dam safety;
- 3       (9) Shall cooperate with all public and private agencies  
4       created for the purpose of enhancing dam safety  
5       activities and training, and assist these  
6       organizations and agencies in coordinating the use of  
7       their facilities and participate in the exchange of  
8       ideas, knowledge, and data with these organizations  
9       and agencies. For this purpose, the board shall  
10       maintain an advisory staff;
- 11       (10) Shall prepare, publish, and issue such printed  
12       pamphlets, bulletins, or advisories, or conduct  
13       training as the board deems necessary for the  
14       dissemination of information to the public;
- 15       (11) May appoint and remove agents and employees including  
16       hearing officers, specialists, and consultants  
17       necessary to carry out the purposes of this chapter,  
18       who may be engaged by the board without regard to the  
19       requirements of chapter 76;
- 20       (12) Shall catalog and maintain an inventory of all  
21       regulated dams and reservoirs in the State pursuant to  
22       this chapter;



- 1        (13) Shall establish similar or consistent hazard potential  
2        classifications in conjunction with other applicable  
3        states or federal guidelines for all regulated dams  
4        and reservoirs in the State pursuant to this chapter  
5        without regard to chapter 91;
- 6        (14) Examine and approve or disapprove applications for  
7        approval of construction, enlargement, repair,  
8        alteration, or removal of a dam or reservoir, and  
9        applications for certificates of approval to impound;
- 10       (15) Order the suspension or revocation, or both, of any  
11       application approval or certificate of approval to  
12       impound for any act for failure to comply with this  
13       chapter or with any rules or orders adopted pursuant  
14       to this chapter, or with any of the conditions  
15       contained in or attached to the application approval  
16       or certificate of approval to impound;
- 17       (16) Issue orders requiring the adoption by an owner of  
18       remedial measures necessary for the safety of life or  
19       public or private property or for carrying out this  
20       chapter or rules issued under this chapter;
- 21       (17) Order the immediate cessation of any act that is  
22       started or continued without an application approval



- 1           or certificate of approval to impound as required by
- 2           this chapter;
- 3       (18) Enter private property and immediately take actions
- 4           necessary to provide protection to life or property at
- 5           the owner's expense, including removal of the dam.
- 6           The entry shall not constitute a cause of action in
- 7           favor of the owner of the land, except for damages
- 8           resulting from wilful acts or negligence by the board
- 9           or its agents;
- 10       (19) Recover from the owner, in the name of the State, the
- 11           expenses incurred in taking any action required by the
- 12           owner of the dam in the same manner debts are
- 13           recoverable by law;
- 14       (20) Assess civil and criminal penalties for violation of
- 15           this chapter or any rule or standard adopted or order
- 16           issued by the board pursuant to this chapter;
- 17       (21) Be authorized to place liens on the owner's property,
- 18           to be collected as delinquent taxes against the lands
- 19           and property are collected, if the owner neglects to
- 20           pay any costs, expenses or penalties chargeable to the
- 21           owner under this chapter or any rule, order, or



1 condition adopted, issued, or required under this  
2 chapter;

3 (22) With the assistance of the attorney general, institute  
4 and prosecute all court actions that may be necessary  
5 to obtain the enforcement of any order issued by the  
6 board in carrying out this chapter; and

7 (23) Take such other actions as may be necessary to carry  
8 out this part."

9 SECTION 8. Section 179D-7, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 " ~~{}~~ §179D-7 ~~{}~~ **Administrative and judicial review.** (a)  
12 The findings and order of the board, and the board's approval or  
13 disapproval of an application issued by the State are final,  
14 conclusive, and binding upon all owners, state agencies, and  
15 other government agencies, regulatory or otherwise, as to the  
16 safety of design, construction, enlargement, repair, alteration,  
17 removal, maintenance, and operation of any dam or reservoir.  
18 The board's approval of an application or a certificate of  
19 approval to impound will not be considered final if it can be  
20 demonstrated to the board that the board's approval of the  
21 relevant application or certificate of approval was based on one  
22 or more misrepresentations.



1        (b) Any person who is aggrieved or adversely affected by  
2 an order or action of the board shall be entitled to  
3 administrative and judicial review in accordance with  
4 chapter 91[-]; provided that the order or action shall remain in  
5 force until modified or set aside on appeal."

6        SECTION 9. Section 179D-8, Hawaii Revised Statutes, is  
7 amended to read as follows:

8        "~~{}~~§179D-8~~{}~~ **Violations; penalties.** ~~[Any person~~  
9 ~~violating any provision of this chapter or any permit condition~~  
10 ~~or limitation established pursuant to this chapter or~~  
11 ~~negligently or wilfully failing or refusing to comply with any~~  
12 ~~final order of the board issued as provided herein, shall be~~  
13 ~~liable for a civil penalty not to exceed \$500 for each day~~  
14 ~~during which said violation continues.]~~ (a) Except as  
15 otherwise provided by law, the board may set, charge, and  
16 collect administrative penalties and recover administrative fees  
17 and costs, including attorney's fees and costs, or bring legal  
18 action to recover administrative penalties, fees, and costs  
19 including attorney's fees and costs, or payment for damages or  
20 for the cost to correct damages resulting from a violation of  
21 this chapter or any rule, order, or condition adopted, issued,  
22 or required under this chapter. The administrative penalty



1 shall not exceed \$25,000 per day of such violation, and each day  
2 during which the violation continues shall constitute an  
3 additional, separate, and distinct offense.

4 (b) Any person who negligently or after written notice to  
5 comply, violates this chapter or any rule, order, or condition  
6 adopted, issued, or required under this chapter, or knowingly  
7 obstructs, hinders, or prevents the department's agents or  
8 employees from performing duties under this chapter, shall be  
9 guilty of a class C felony, and upon conviction thereof, shall  
10 be punished as follows:

11 (1) For a first conviction by a mandatory fine of not less  
12 than \$2,500 nor more than \$25,000 per day of  
13 violation, or by imprisonment of not more allowed by  
14 law, or both; and

15 (2) For a second or subsequent conviction by a mandatory  
16 fine of not less than \$5,000 nor more than \$50,000 per  
17 day of violation, or by imprisonment of not more than  
18 allowed by law, or both.

19 (c) Any criminal action against a person for any violation  
20 of this chapter shall not be deemed to preclude the State from  
21 pursuing civil legal action to recover administrative penalties,  
22 fees and costs against that person. Any civil action against a



1 person to recover administrative penalties, fees, and costs for  
2 any violation of this chapter or any rule, order, or condition  
3 adopted, issued, or required under this chapter shall not be  
4 deemed to preclude the State from pursuing any criminal action  
5 against that person.

6 (d) With the assistance of the attorney general, the board  
7 may seek an injunction and damages in the enforcement of this  
8 chapter.

9 (e) All penalties, fees, and costs collected pursuant to  
10 this section or rules adopted by the board pursuant to this  
11 chapter, shall be deposited in the dam safety fund."

12 SECTION 10. Section 179D-9, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "[+]§179D-9[+] **Enactment of rules.** (a) The department  
15 shall adopt the necessary rules not later than one and one-half  
16 years after [~~June 6, 1987.~~] July 1, 2007.

17 (b) A declaration that certain parts of this Act are  
18 unconstitutional shall not affect the constitutionality of other  
19 parts of this Act."

20 SECTION 11. There is appropriated out of the general  
21 revenues of the State of Hawaii the sum of \$2,000,000, or so





1 much thereof as may be necessary for fiscal year 2007-2008, to  
2 be deposited into the dam safety special fund.

3 SECTION 12. There is appropriated out of the dam safety  
4 special fund the sum of \$2,000,000, or so much thereof as may be  
5 necessary for fiscal year 2007-2008, for to carry out the  
6 purposes of the dam safety special fund.

7 The sum appropriated shall be expended by the department of  
8 land and natural resources for the purposes of this Act.

9 SECTION 13. Chapter 179D, Hawaii Revised Statutes, is  
10 amended by designating section 179-1 to 179-9 as part I,  
11 entitled:

12 "PART I. GENERAL PROVISIONS"

13 SECTION 14. In codifying the new sections added by section  
14 10 of this Act, the revisor of statutes shall substitute  
15 appropriate section numbers for the letters used in designating  
16 the new sections in this Act.

17 SECTION 15. If any provision of this Act, or the  
18 application thereof to any person or circumstance is held  
19 invalid, the invalidity does not affect other provisions or  
20 applications of the Act, which can be given effect without the  
21 invalid provision or application, and to this end the provisions  
22 of this Act are severable.



1 SECTION 16. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 17. This Act shall take effect upon its approval;  
4 provided that sections 11 and 12 shall take effect on July 1,  
5 2007.



**Report Title:**

Dam Safety; Additional Provisions

**Description:**

Adds extensive provisions to the dam safety chapter to improve safety to dams and reservoirs in the State. (SD1)

